

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2000-554

September 19, 2000

PUBLIC UTILITIES COMMISSION  
Amendments to Chapter 51  
Authorization and Operation of Ferries  
In Casco Bay (Chapter 510)

ORDER ADOPTING  
AMENDED RULE

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WELCH, Chairman; NUGENT and DIAMOND, Commissioners

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**I. SUMMARY**

We adopt amendments to Chapter 510<sup>1</sup> to make the rule consistent with statutory changes affecting the operation of ferries in Casco Bay.  
35-A M.R.S.A. §§ 5101 – 5101-C.

**II. BACKGROUND**

In 1992, the Legislature amended Chapter 51 of Title 35-A, adding sections 5101-A – 5101-C, relating to the regulation of ferries in Casco Bay (P.L. 1991, ch. 774, eff. March 30, 1992). These amendments govern all regularly scheduled ferry service in Casco Bay (with certain minor exemptions described in 35-A M.R.S.A. § 5101-F). The 1992 amendments provide that to obtain a permanent certificate of public convenience and necessity to offer regularly scheduled passenger, freight or vehicle transportation service, an applicant must demonstrate inadequacies or deficiencies in the current service provided by Casco Bay Island Transit District (CBITD). The amendments also require the Commission to consider the cumulative impact of each application, together with previously granted authority, to avoid any significant adverse impact on CBITD's rates, its ability to pay its debt, or its ability to retain a reasonable level of cross-subsidization.

Only CBITD is currently authorized to provide regularly scheduled service. Chapter 51 of the Commission's rules was adopted in 1986 and deals with authorization and operation of "water common carriers." At that time neither the rule nor the statutes distinguished between regularly scheduled service and unscheduled services. All unscheduled services, both freight and passenger, are now addressed in 35-A M.R.S.A. §§ 5101-D and 5101-E and Commission Rule Chapter 520. On July 17, 2000, we opened this rulemaking (along with companion rulemakings *Public Utilities Commission, Amendments to Chapter 560, Public Notice Required for Rate Changes Filed by Casco Bay Island Transit*

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<sup>1</sup> The Commission now designates its rules with 3-digit numbers. Therefore Chapter 51 will become Chapter 510.

*District, Docket No. 2000-555 and Public Utilities Commission, Amendments to Chapter 520, Unscheduled Tour, Charter and Water Taxi Services in Casco Bay, Docket No. 2000-556), to make changes to the rule consistent with 35-A M.R.S.A. §§ 5101 - 5101-C.*

We proposed eliminating the rule's requirement that all ferries file their operating schedules with the Commission, adding the requirements contained in 35-A M.R.S.A. § 5101-C that describe the criteria that must be met for any entity other than CBITD to provide regularly scheduled ferry service, and adding a process and form for applicants seeking to provide either permanent or seasonal regularly scheduled service.

CBITD filed the only substantive comments on the Proposed Rule. The Public Advocate filed a letter stating he did not object to the proposed amendments. As discussed below, after reviewing CBITD's comments, we have determined that the rule can be substantially simplified, particularly given that unscheduled service is now treated in newly amended Chapter 520.

### III. DISCUSSION OF FINAL RULE

#### A. Section 1: Purpose

We have added a "Purpose" Section to the Final Rule to make clear that the rule applies to all ferry service in Casco Bay except charter, tour, water taxi or unscheduled freight service. Ferry service for purposes of this rule has the same definition as in Chapter 520.<sup>2</sup>

#### B. Section 2: Operating Schedules

We proposed eliminating the requirement in the current rule that ferries file copies of their operating schedules with the Commission. CBITD had not been complying with this requirement, and the Commission does not get requests from the public for such information and rarely, if ever, has occasion to examine this information. In its comments, CBITD suggested that we retain this requirement. In particular, it notes authorization to provide scheduled ferry service can only be granted if the scheduled service of CBITD is inadequate or to cure deficiencies in existing scheduled services of CBITD. 35-A M.R.S.A. § 5101-B. Consequently, CBITD claims that retaining the requirements will help the Commission and parties ensure that this requirement is satisfied should an entity seek to provide regularly scheduled service or if any other authorized provider wishes to change its service.

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<sup>2</sup> Ferry service means waterborne transportation service of passengers and/or freight in Casco Bay stopping at one or more of the following islands: Chebeague, Cliff, Great Diamond, Long and Peaks, that is not charter, tour, water taxi or unscheduled freight service.

CBITD is correct about these requirements. However, we believe it is adequate for ferries to maintain a copy of their operating schedules in their principal terminal and open to public inspection upon request (similar to the requirements in 35-A M.R.S.A. § 305 for rate schedules and terms and conditions). If an entity seeks a certificate under 35-A M.R.S.A. § 5101-B, the Commission would request copies of CBITD's operating schedules at that time. The Commission may issue a certificate subject to conditions relating to alteration in operating schedules, as permitted by 35-A M.R.S.A. § 5101. Therefore, we have amended section 2 to require all ferries to maintain their operating schedules at their principal terminals.

C. Section 3: Rate Schedules

We proposed maintaining current rate schedule requirements (Section 3 in the Final Rule) but replacing the references to "tariff" with the term "rate schedule" as this is the terminology used in Title 35-A. See, e.g., 35-A M.R.S.A. §§ 304, 5103. CBITD suggested that, in addition to rate schedules, we require that "terms and conditions of service" be filed with the Commission. This is consistent with the requirements of 35-A M.R.S.A. § 304 and we have made the necessary changes in the Final Rule.

D. Section 4: Certificate of Public Convenience and Necessity

We proposed adding new sections 2 and 3 to the Rule to describe the circumstances under which the Commission would grant a certificate of public convenience and necessity to operate regularly scheduled service in Casco Bay, either permanently or seasonally. The language mirrored the requirements in 35-A M.R.S.A. §§ 5101, 5101-A, 5101-B, and 5101-C. We proposed some factors that could be considered in determining whether CBITD's service was inadequate. Proposed Rule Section 3(D).

CBITD suggested certain changes, in particular ones that would have the rule more closely reflect the language in the statute. In addition, CBITD objected to the factors listed in proposed Section 3(D)(1) because they are not contained in the statute and are only a partial listing of factors that may be relevant.

After reviewing CBITD's comments, we question the need to include these provisions in a rule. The statute describes the circumstances under which a carrier other than CBITD may provide regularly scheduled service. Since no entity has yet requested such authority, our experience applying these requirements is limited. At this time, we do not see a need to repeat the statutory requirements in a rule. If an entity applies for a certificate, we will apply the applicable statutory requirements and all procedural requirements in Title 35-A and the Maine Administrative Procedures Act and our own rules of practice and

procedure. Therefore, we eliminate proposed sections 2, 3 and 4 and the application form and simply refer to the statutory requirements in Section 4 of the Final Rule.

E. Section 5: Waiver

We maintain our standard waiver language in Section 5 of the Final Rule.

Accordingly, we

O R D E R

1. That the attached Chapter 510, Authorization and Operation of Ferries in Casco Bay, is adopted;
2. That the Administrative Director shall send copies of this Order and the attached Rule to:
  - a. Casco Bay Island Transit District;
  - b. All entities on the Commission's list of water common carriers;
  - c. All persons who have filed a written request with the Commission within the last year for Notice of Rulemaking;
  - d. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053; and
  - e. Executive Director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies).
3. That this Order will also be posted on the Commission's web site at [www.state.me.us/mpuc](http://www.state.me.us/mpuc).

Dated at Augusta, Maine, this 19th day of September, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond